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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,548	10/07/2003	Stephen J. Brown	6858P001X14 / 014030.0110	2547
60683 7590 09/02/2008 HEALTH HERO NETWORK, INC. 2400 GENG ROAD, SUITE 200 PALO ALTO, CA 94303			EXAMINER LUBIN, VALERIE	
			ART UNIT 3626	PAPER NUMBER
			MAIL DATE 09/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/605,548	Applicant(s) BROWN, STEPHEN J.	
	Examiner VALERIE LUBIN	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/7/2005, 7/16/08</u> . | 6) <input checked="" type="checkbox"/> Other: <u>EAST search history</u> . |

DETAILED ACTION

Acknowledgements

1. Claims 1-36 are pending

For reference purposes, the document paper number is 20080821

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Independent claim 1 is to a system comprising a central computer, a microprocessor with a display and a memory and at least one health care computer. However, the claim also recites method steps for the microprocessor. The claim is indefinite, as Examiner cannot identify the metes and bounds of the claim.

Claims 2-18, as dependents of claim 1, are rejected under the same analysis.

5. Claims 2 and 3 are also indefinite as they are related to a method and it is unclear how they correlate to the system of claim 1 from which they depend.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Beckers U.S. Patent No. 5,019,974.

8. With respect to claim 1, Beckers teaches at least one central server (Col. 9 lines 24-26); a microprocessor (Col. 1 lines 35-45; col. 3 lines 24-27); and a health care computer (Col. 1 lines 33-34; col. 2 lines 21-26). Beckers also recites the health care computer remotely located from the server (Col. 10 lines 14-15).

Claim 19 is rejected under the analysis of claim 1.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-18 and 20-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beckers U.S. Patent No. 5,019,974 in view of Kretsch et al. U.S. Patent No. 5,233,520.

11. With respect to claim 2, Beckers recites entering information into memory pertaining to diet (Col. 2 lines 30-32). Beckers does not specifically recite entering food intake information into quantitative units; however, Kretsch does (Col. 3 lines 58-63). It would therefore have been obvious to one of ordinary skill in the art to combine the teachings of Beckers with those of Kretsch, as both inventions would have performed the same functions when combined as separately and produced predictable results.

Claim 20 is rejected under the analysis of claim 2.

12. Claim 3 is rejected, as Beckers recites food intake information in terms of exchange units (Col. 2 lines 53-54).

Claim 21 is rejected under the analysis of claim 3.

13. Claim 4 is rendered obvious, as Kretsch discloses selecting a food intake menu item using a menu display (Col. 20 lines 64-67; col. 21 lines 1-5).

Claim 22 is rejected under the analysis of claim 4.

14. Claim 5 is rejected, as Kretsch recites time-related data (Col. 4 lines 47-48).

Claim 23 is rejected under the analysis of claim 5.

15. Claim 6 is rejected because Beckers discloses the microprocessor having buttons, keys or switches (Fig. 1; col. 2 lines 38-67).

Claim 24 is rejected under the analysis of claim 6.

16. With regards to claims 7 and 8, Beckers discloses a handheld device as seen in Fig 1 and Kretsch recites a portable computer (Col. 8 lines 12-13).

Claims 25 and 26 are rejected under the analysis of claims 7 and 8.

17. Claim 9 is rejected, as Beckers recites the microprocessor displaying pictorial information (Fig. 2; col. 3 lines 1-20).

Claim 27 is rejected under the analysis of claim 9.

18. With respect to claim 10, Examine takes Official Notice that a removable memory was old and well known in the art at the time the invention was made. It would therefore, have been obvious to combine the teachings of Beckers and Kretsch with the prior art in order to facilitate data movement and accessibility for different users of the inventions.

Claim 28 is rejected under the analysis of claim 10.

19. Claim 11 is rendered obvious as Beckers recites generating a print-out (Col. 10 lines 34-35); and Kretsch discloses a report (Col. 28 lines 39-47).

Claim 29 is rejected under the analysis of claim 11.

20. Claim 12 is rejected as Beckers recites a report in graphic format (Col. 10 lines 34-35).

Claim 30 is rejected under the analysis of claim 12.

21. With regards to claim 13, Kretsch recites providing a report (Col. 28 lines 39-47) and a time associated with entered data (Col. 4 lines 47-48). A predictable result of Kretsch would therefore be to generate a report for data entered for a specific time (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

Furthermore, a wherein/whereby clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim ((Texas Instruments Inc. v. International Trade Commission 26, USPQ2d 1010 (Fed. Cir. 1993); Griffin v. Bertina, 62 USPQ2d 1431 (Fed. Cir. 2002); Amazon.com Inc. v. Barnesandnoble.com Inc., 57 USPQ2d 1747 (CAFC 2001)). Therefore, claim 13 does not further limit the limitation of claim 11.

Claim 31 is rejected under the analysis of claim 13.

22. Claim 14 is rejected, as Kretsch recites transmitting at least one message for display on at least one microprocessor device's display. (Col. 4 lines 49-50; col. 23 lines 24-27).

Claims 32 is rejected under the analysis of claim 14.

23. For claim 15, the information contained in the message displayed is non-functional descriptive material that does not further limit the system's ability to display messages (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II). Claim 15 therefore does not further limit the system of claim 14 and is rejected under the analysis of claim 14.

Furthermore, Kretsch discloses the displaying instructions (Col. 4 lines 49-50).

Claims 16, 33 and 34 are rejected under the analysis of claim 15.

24. Claim 17 is rendered obvious as Kretsch discloses displaying messages to specific users (Col. 4 lines 49-50; col. 23 lines 19-59). Furthermore, the wherein clause of the claim merely states the result of the limitations in the claim and adds nothing to the patentability or substance of the claim ((Texas Instruments Inc. v. International Trade Commission 26, USPQ2d 1010 (Fed. Cir. 1993); Griffin v. Bertina, 62 USPQ2d 1431 (Fed. Cir. 2002); Amazon.com Inc. v. Barnesandnoble.com Inc., 57 USPQ2d 1747 (CAFC 2001)).

Claim 35 is rejected under the analysis of claim 17.

25. Claim 18 is rejected, as Beckers recites the system being enabled to provide from the server for storage in a memory of and execution by at least one microprocessor device (Col. 2 lines 21-30).

Claim 36 is rejected under the analysis of claim 18.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a) McLean et al. U.S Patent No. 5,282,247 recites a removable memory cartridge.
- b) Kirschenbaum et al. U.S. Patent No. 5,217,379 recites motivational messages.
- c) Behar et al. U.S. Patent No. 4,853,854 discloses a handheld device for behavior modification.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALERIE LUBIN whose telephone number is (571)270-5295. The examiner can normally be reached on Monday-Friday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher L. Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VL

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626